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Teoh Weng You & Anor v Tan Hee Joo

B HIGH COURT (PENANG) — CIVIL APPEAL NO PA-12B-106–11 OF 2016
AHMAD SHAHRIR JC
8 MAY 2017

C *Tort — Road accident — Liability and quantum — Accident occurred between respondent and first appellant — Sessions court judge ('SCJ') found respondent 70% liable and first appellant 30% liable — Sessions court awarded damages — Appellants appealed against decision — Whether SCJ correct that both parties were negligent — Whether SCJ applied correct principles on finding of liability* D *and apportionment of liability — Whether award erroneous and manifestly excessive*

An accident occurred between the respondent who was riding motorcycle and the first appellant who was driving motor lorry at Jalan Taman Perwira towards E Permatang Tinggi, Bukit Mertajam. The collision occurred at the mouth of the junction to Lorong Perwira 6. The respondent's version was that he was attempting to overtake the first appellant's motor lorry before reached the junction to Lorong Perwira 6 but he was hit at the rear by the said motor lorry when it suddenly turned right. According to an eyewitness ('SP2'), the first F appellant's motor lorry did not give any signal and did not stop before turning right. In contrast, the first appellant argued that he gave signal to turn right into Lorong Perwira 6. After full trial, the sessions court judge ('the SCJ') found the respondent 70% liable and the first appellant 30% liable. Aggrieved by the decision, the appellants filed the present appeal on issues of liability and G quantum.

Held, dismissing the appeal and affirming the decision of the SCJ on both liability and quantum except for the SCJ's decision on loss of earnings:

H (1) The learned SCJ had applied the correct principles and her findings were supported by the evidence adduced. The mute evidence which was considered by the learned SCJ clearly supported the finding of facts she made. The court agreed with the SCJ that: the motor lorry driven by the first appellant had attempted to turn right even before he approached the mouth of the junction; and the first appellant did not give a signal to turn I before making the right turn into Lorong Perwira 6. The first appellant lodged the police report on the same day. If the first appellant did in fact

give a signal before turning right, he would have stated it so in the police report. Nonetheless, the damage to the vehicles did not support the respondent's contention that the first appellant's motor lorry had hit the respondent's motorcycle at the rear. Based on the above, the court agreed with the findings of the SCJ that the respondent and the first appellant were both negligent (see paras 36 & 39–40).

(2) The learned SCJ made a finding that the respondent had behaved in a dangerous manner when he overtook the motor lorry at a place where there was junction. This finding was consistent with the fact that the respondent was issued with a traffic summons under r 10 of the Road Traffic Rules 1959 and he paid the fines. This showed that the learned SCJ had directed her mind to the fact of the traffic summons being paid by the respondent and considered that such fact weighed against the respondent when she apportioned the liability between the parties. Based on the evidence, there was no reason to disturb the SCJ's decision on apportionment of liability (see paras 44–45).

(3) The learned SCJ made separate awards for fracture of three ribs and bilateral lung contusion and haemothorax. Based on the evidence, the injuries sustained were related to different parts of the body and affect different functions. There was no challenge advanced by the appellants to show that these injuries were connected and should be assessed together as a global award. Therefore, the learned SCJ was right in exercising her discretion to make separate awards. Further, the learned SCJ had relied on and considered the relevant cases as well as the range of awards found in the Compendium of Personal Injury Awards 2014. The learned SCJ had considered relevant factors and the award was not erroneous or manifestly excessive. The court accordingly affirmed the same (see paras 46–47 & 50).

(4) Based on the evidence and document tendered, the respondent's employers said in evidence that the respondent was paid his salary of RM3,000 a month until the month of July 2014. The respondent was given medical leave only until 15 September 2014. Thus, the court reduced the award for loss of earnings to one and a half months and awarded the respondent RM4,500 (see para 51).

[Bahasa Malaysia summary

Kemalangan berlaku di antara responden yang menunggang motorsikal dan perayu pertama yang memandu lori di Jalan Taman Perwira menghala ke Permatang Tinggi, Bukit Mertajam. Perlanggaran berlaku di hujung persimpangan ke Lorong Perwira 6. Versi responden adalah bahawa dia mencuba untuk memotong lori perayu pertama sebelum sampai

persimpangan ke Lorong Perwira 6 tetapi dia telah dilanggar di bahagian belakang oleh lori tersebut apabila ia tiba-tiba pusing ke kanan. Mengikut saksi ('SP2'), lori perayu pertama tidak memberi apa-apa isyarat dan tidak berhenti sebelum pusing ke kanan. Sebaliknya, perayu pertama berhujah bahawa dia telah memberi isyarat untuk memusing ke kanan ke Lorong Perwira 6. Selepas perbicaraan penuh, hakim mahkamah sesyen ('HMS') mendapati responden bertangunggan sebanyak 70% dan perayu pertama bertangunggan sebanyak 30%. Tidak puas hati dengan keputusan tersebut, perayu-perayu memfailkan rayuan ini atas isu liabiliti dan kuantum.

Diputuskan, menolak rayuan dan mengesahkan keputusan HMS atas kedua-dua liabiliti dan kuantum kecuali untuk keputusan HMS atas kehilangan pendapatan:

(1) HMS telah menggunapakai prinsip yang betul dan dapatannya disokong oleh keterangan yang dikemukakan. Keterangan diam yang mana dipertimbangakan oleh HMS yang bijaksana jelas menyokong dapatan fakta yang dibuatnya. Mahkamah bersetuju dengan HMS bahawa: lori yang dipandu oleh perayu pertama telah mencuba untuk memusing ke kanan sebelum dia mendekati mulut persimpangan; dan perayu pertama tidak memberi isyarat untuk memusing sebelum membuat pusingan ke kanan ke Lorong Perwira 6. Perayu pertama membuat laporan polis pada hari yang sama. Jika perayu pertama memberi isyarat sebelum memusing ke kanan, dia kan menyatakannya di dalam laporan polis. Walau bagaimanapun, kerosakan kenderaan tidak menyokong hujahan responden bahawa lori perayu pertama telah melanggar motorsikal responden daripada belakang. Berdasarkan di atas, mahkamah bersetuju dengan dengan dapatan HMS bahawa responden dan perayu pertama kedua-dua mereka cuai (lihat perenggan 36 & 39–40).

(2) HMS yang bijaksana membuat dapatan bahawa responden telah bertindak dalam cara yang berbahaya apabila dia memotong lori di tempat di mana terdapat persimpangan. Dapatan ini adalah konsisten dengan fakta bahawa responden telah diberikan saman trafik di bawah k 10 Kaedah-Kaedah Lalu Lintas Jalan 1959 dan dia membayar denda tersebut. Ini menunjukkan bahawa HMS telah mengarahkan mindanya kepada fakta saman trafik dibayar oleh responden dan mempertimbangkan bahawa fakta sedemikian ditimbang terhadap responden apabila beliau membahagikan liabiliti di antara pihak-pihak. Berdasarkan keterangan, tiada sebab untuk menganggu keputusan HMS atas pembahagian liabiliti (lihat perenggan 44–45).

(3) HMS yang bijaksana membuat award berasingan bagi keretakan tiga tulang rusuk dan kontusi paru-paru bilateral dan hemotoraks. Berdasarkan keterangan, kecederaan yag dialami adalah berkaitan kepada

bahagian tubuh yang berbeza dan menjejaskan fungsi berbeza. Tiada cabaran dibangkitkan oleh perayu-perayu untuk menunjukkan bahawa kecederaan ini adalah berkaitan dan patut ditaksirkan bersama sebagai award global. Oleh itu, HMS yang bijaksana adalah betul dalam menjalankan budi bicaranya untuk membuat award berasingan. Selanjutnya, HMS telah bergantung dan mempertimbangkan kes-kes relevan dan juga julat award yang didapati di dalam Compendium of Personal Injury Awards 2014. HMS yang bijaksana telah mempertimbangkan faktor relevan dan award tersebut bukan salah atau jelas berlebihan. Mahkamah oleh itu mengesahkannya (lihat perenggan 46–47 & 50).

(4) Berdasarkan ke atas keterangan dan dokumen yang dikemukakan, majikan responden menyatakan di dalam keterangan bahawa responden dibayar gajinya sebanyak RM3,000 sebulan sehingga bulan Julai 2014. Responden diberikan cuti sakit hanya sehingga 15 September 2014. Oleh itu, mahkamah mengurangkan award bagi kehilangan pendapatan kepada satu bulan setengah dan mengawardkan responden sebanyak RM4,500 (lihat perenggan 51).]

Notes

For cases on road accident in general, see 12(2) *Mallal's Digest* (5th Ed, 2015) paras 2294–2298.

Cases referred to

Amar Singh v Chin Kiew [1960] 1 MLJ 77; [1960] 1 LNS 5, CA (refd)
Azman bin Sakio & Anor v Kang Kok Tai (Thye) [2010] 2 PIR 2 (refd)
Bank Utama (M) Bhd v Insan Budi Sdn Bhd [2009] 1 MLJ 148; [2009] 1 CLJ 221, CA (refd)
Chai Kah Sim v Ishak bin Saad [1986] 2 MLJ 132; [1986] CLJ Rep 80, SC (refd)
Chang Chong Foo & Anor v Shivanathan [1992] 2 MLJ 473; [1992] 1 CLJ Rep 27, SC (refd)
Chong Sao Kuan v Danian Yeng bin Shaifullah [2014] 2 PIR 93 (not folld)
Hazleen bt Md Salleh & 2 Ors v Wong Chee Keong & Anor [2012] 1 PIR 50 (refd)
Mahmod bin Kailan v Goh Seng Choon & Anor [1976] 2 MLJ 239; [1976] 1 LNS 68, FC (folld)
Mohd Aiysar bin Mohd Asri v Karuppaiya a/l Ramu & Anor [2013] PIR 19 (refd)
Mohd Noorusallam bin Md Saad v Jamaluddin bin Desa [2016] 1 PIR 42 (refd)
Mohd Zairin bin Zainon v Loh Chuan Kiat [2012] 1 PIR 64 (refd)
Muhamad Nur Helmy bin Mohd Surah v Mohamad Syahamirul Aizat bin Mohd Ali & Anor [2016] 1 PIR 66 (refd)

Muhammad Syazani bin Ishal v Naavin Danial Moorthi [2015] 2 PIR 50 (refd)
Sunil Sunar & 2 Ors v Batao a/l Murugiah & Anor [2016] 1 PIR 57 (refd)
Takong Tabari v Government of Sarawak & Ors and another appeal [1998] 4 MLJ 512; [1998] 4 CLJ 589, CA (refd)
Thinageran a/l Vejian & Anor v Huan Kim Hock [2012] 2 PIR 46 (refd)

Legislation referred to

Road Traffic Rules 1959 r 10

Pryadarsini d/o Sathasivam (Lachaman Lalchand & Assoc) for the appellants.
Pamela Vijayrani d/o Tanikoddy (Noraisyah Ismail, Pamela Vijayrani & Co) for the respondent.

Ahmad Shahrir JC:

INTRODUCTION

[1] This is an appeal by the defendants against the decision of the learned sessions court judge on issues of liability and quantum in a running down case. After a full trial at the sessions court, the learned sessions court judge finds the plaintiff 70% liable and the first defendant 30% liable.

[2] General damages is awarded in the sum of RM153,000 made up of the following injuries:

(a)	retrograde amnesia with loss of consciousness:	RM6,000
(b)	bilateral temporal scalp haematoma and multiple soft tissue injuries:	RM8,000
(c)	multiple skull fractures with right temporal lobe intercerebral haemorrhage, right mastoid bone fracture and fracture wall of sphenoid sinus:	RM40,000
(d)	closed comminuted right clavicle fracture with acromioclavicular subluxation Grade II right shoulder, bone grafting:	RM25,000
(e)	fracture of three ribs:	RM12,000
(f)	bilateral lung contusion and haemothorax:	RM15,000
(g)	scar:	RM2,000
(h)	total loss of hearing in the right ear:	RM45,000

[3] Special damages is awarded in the sum of RM6,552.81 made up as follows:

(a)	damage to clothing, loss of helmet, cost of police report and photographs (agreed by parties):	RM100
(b)	cost for follow-up medical check-up (agreed by parties):	RM452.81
(c)	loss of earnings for the period of two months when the plaintiff was on medical leave for the month of August–September 2014:	RM6,000

[4] Interest and costs were awarded. In this appeal, the parties will be referred to as plaintiff and defendant respectively, as they were in the sessions court.

BRIEF FACTS

[5] An accident occurred on 23 June 2014 at around 1.30pm between the plaintiff and the first defendant at Jalan Taman Perwira towards Permatang Tinggi, Bukit Mertajam. The collision occurred at the mouth of the junction to Lorong Perwira 6. Both parties were travelling in the same direction. The plaintiff was riding motorcycle No PFW 2358 and the first defendant was driving motor lorry No PGS 5398.

[6] Both parties gave different versions of the accident.

THE DIFFERENT VERSIONS

The plaintiff's version

[7] According to the plaintiff ('SP3'), he was attempting to overtake motor lorry PGS 5398 before he reached the junction to Lorong Perwira 6 but he was hit at the rear by motor lorry PGS 5398 when motor lorry PGS 5398 suddenly turned right. The plaintiff did not see motor lorry PGS 5398 giving any signal to turn right.

[8] According to an eyewitness ('SP2'), he saw the plaintiff overtaking motor lorry PGS 5398 before the junction to Lorong Perwira 6. Later, the motor lorry PGS 5398 turned right and the collision occurred. SP2 said that the motor lorry PGS 5398 did not give any signal and did not stop before turning right.

The defendants' version

[9] According to the first defendant ('SD1'), he gave signal to turn right into Lorong Perwira 6. He did not see any vehicles approaching then and he

made the right turn. Upon making that right turn, he heard a collision sound and found that the plaintiff had collided with his motor lorry PGS 5398.

EVIDENCE OF THE INVESTIGATING OFFICER

[10] According to the investigating officer ('SP1'), when he arrived at the scene of the accident on 23 June 2014 at about 2.10pm, both motorcycle PFW 2358 and motor lorry PGS 5398 were still at the scene of the accident and had not been not removed. SP1 confirms that both the motorcycle PFW 2358 and motor lorry PGS 5398 were travelling in the same direction towards Permatang Tinggi and the collision occurred at the mouth of the junction to Lorong Perwira 6. It is a residential area and the speed limit is between 30–40km/h. SP1 drew a sketch plan to illustrate the scene of the accident and indicate the position of motorcycle PFW 2358 and motor lorry PGS 5398 as he found them. SP1 also prepared a key to the sketch plan. Both the sketch plan and key were tendered as exhs P1 and P1K respectively.

[11] In the sketch plan, SP1 marked the position where he believes the point of impact occurs as 'F'. According to SP1, there are scratch marks on the road at position 'F' in the sketch plan but there are no broken pieces or fragments. SP1 believes that the scratch marks marked as 'F' in the sketch plan was caused by the motorcycle PFW 2358 in the collision. In his evidence, SP1 said that the point of impact marked as 'F' is located at the direction of traffic opposite to the direction the plaintiff was travelling in.

[12] SP1 gave evidence that the damage to motorcycle PFW 2358 are a bent to the left side mirror, a broken right side mirror, a scratch to the right side of the body-cover and a bent to the right foot pedal. The damage to motor lorry PGS 5398 are scratches to the right front door, a bent to the right foot steps and a bent to the right side mirror.

CONTENTION OF PARTIES ON THE ISSUE OF LIABILITY

The defendants'/appellants' submissions

[13] Learned counsel for the defendants argues that that stretch of the road where the collision occurs bears a dotted line at its centre whereby vehicles from both directions are allowed to overtake. Learned counsel for the defendants contends that the plaintiff should ride on the left side of the road and not on the right and opposite side, that is, the position the plaintiff's motorcycle PFW 2358 was found in after the collision.

[14] It is also contended by learned counsel for the defendants that the plaintiff was riding at a high speed when the collision occurred, bearing in

mind that the scene of the accident is a residential area. This is supported by the extent of the damage to motorcycle PFW 2358. The damage to motorcycle PFW 2358 would not have been substantial if the plaintiff were not speeding at the material time. The plaintiff admitted in evidence that he is familiar with the place where the accident occurred and he knows that there are many junctions where vehicles may turn into or exit from the junctions. The plaintiff further agreed that he should not attempt to overtake.

The plaintiff's/respondents' submissions

[15] Learned counsel for the plaintiff contends that it is probable that the first defendant did not give signal before making the right turn because that fact was not stated in his police report. It was only during the trial at the sessions court that the first defendant said that he did in fact give signal before making the right turn. Learned counsel for the plaintiff also argues that the first defendant did not make any correction to his police report to state that he did in fact give signal before making the right turn. Coupled with the evidence of SP2 as the eyewitness, learned counsel for the plaintiff submits that it is more probable that the first defendant did not in fact give signal before turning right.

[16] The first defendant himself gave evidence that he did not make a brief stop at the mouth of the junction. It is contended that the first defendant should give signal to turn right and make a brief stop at the centre of the road before actually taking the right turn. This is evident from the photographs which show that motor lorry PGS 5398 was already at the mouth of the junction to Lorong Perwira 6.

CONTENTION OF PARTIES ON THE ISSUE OF QUANTUM

Quantum agreed

[17] In this appeal, both the plaintiff and the defendants are in agreement with the quantum awarded by the learned sessions court judge in respect of certain injuries. These are the injuries whereby the quantum is agreed and I will not deal with the parties' respective contentions:

(a) RM8,000 for bilateral temporal scalp haematoma and multiple soft tissue injuries;

(b) RM40,000 for multiple skull fracture with right temporal lobe intercerebral haemorrhage, right mastoid bone fracture and fracture wall of sphenoid sinus; and

(c) RM25,000 for closed comminuted right clavicle fracture with acromioclavicular subluxation Grade II right shoulder, bone grafting.

Quantum disputed

[18] For other injuries, the parties' respective arguments are as follows.

(a) Retrograde amnesia with loss of consciousness.

[19] Learned counsel for the plaintiff submits that the sum of RM6,000 should be awarded for this injury. The case of *Muhammad Syazani bin lshal v Naavin Danial Moorthi* [2015] 2 PIR 50 is referred. Learned counsel for the defendants argued that the award for this injury should be RM4,000. The case of *Mohd Aiysar bin Mohd Asri v Karuppaiya a/l Ramu & Anor* [2013] PIR 19 is referred.

(b) Fracture of three ribs, bilateral lung contusion and haemothorax.

[20] Based on the case of *Muhamad Nur Helmy bin Mohd Surah v Mohamad Syahamirul Aizat bin Mohd Ali & Anor* [2016] 1 PIR 66, the plaintiff seeks an award of RM12,000 for the fracture of three ribs and RM15,000 separately for the bilateral lung contusion and haemothorax. Learned counsel for the plaintiff relies on the case of *Mohd Noorusallam bin Md Saad v Jamaluddin bin Desa* [2016] 1 PIR 42. Learned counsel for the defendants argues that an award of RM14,000 should be given for multiple fracture of the ribs with bilateral lung contusion and bilateral haemothorax based on the case of *Chong Sao Kuan v Danian Yeng bin Shaifullah* [2014] 2 PIR 93.

(c) Scar

[21] The plaintiff seeks for an award of RM5,000 based on the case of *Sunil Sunar & 2 Ors v Batao a/l Murugiah & Anor* [2016] 1 PIR 57. Whereas the defendants seeks for an award of RM1,000 based on the case of *Thinageran a/l Vejian & Anor v Huan Kim Hock* [2012] 2 PIR 46.

(d) Total loss of hearing in the right ear

[22] The plaintiff seeks for an award of RM50,000 based on the case of *Hazleen bt Md Salleh & 2 Ors v Wong Chee Keong & Anor* [2012] 1 PIR 50. The defendants argued that the award should be RM18,000 based on the cases of *Azman bin Sakio & Anor v Kang Kok Tai (Thye)* [2010] 2 PIR 2 and *Mohd Zairin bin Zainon v Loh Chuan Kiat* [2012] 1 PIR 64.

DECISION OF THE SESSIONS COURT

Liability

[23] The learned sessions court judge finds negligence against both the plaintiff and the first defendant. The learned sessions court judge apportions 70% liability against the plaintiff and 30% liability against the first defendant.

[24] In finding 70% liability against the plaintiff, the learned sessions court judge finds that at the time the collision occurred, the plaintiff was in fact overtaking motor lorry PGS 5398. The learned sessions court judge also finds that the plaintiff knows that there was a junction ahead on that road and that the plaintiff should have kept to the left side of the road. The plaintiff was found to behave in a dangerous manner when he attempted to overtake near junctions.

[25] In finding 30% liability against the first defendant, the learned sessions court judge finds that the first defendant did not stop at the junction before making the right turn and did not give any signal to turn right. According to the learned sessions court judge, the first defendant made the right turn when he was sure that there were no vehicles approaching but he should have stopped a few moments before actually making that right turn. The photographs tendered as exhs P2(a) and P2(b) show the position of both vehicles after the collision. Both vehicles have not been moved when the photographs were taken. Based on the photographs, the learned sessions court judge also considers it probable that the first defendant had attempted to turn right even before he approached the mouth of the junction because motor lorry PGS 5398 was still on the main road and had not made a 90 degree turn into Lorong Perwira 6.

Quantum

[26] In arriving at the award for general damages as I have set out earlier in the beginning, the learned sessions court judge has heard the submissions of counsel from both parties and referred to the following medical reports:

(a) medical report dated 10 December 2014 from Hospital Seberang Jaya;

(b) medical report dated 9 November 2014 from Pantai Hospital (orthopaedic);

(c) medical report dated 6 January 2015 from Hospital Pantai (head injuries);

(d) specialist report dated 13 April 2016 from Pantai Hospital Sungai Petani;

(e) specialist report dated 20 May 2016 from Hospital Seberang Jaya; and

(f) specialist report dated 18 August 2016 from Island Hospital.

[27] Special damages in the sum of RM6,000 for loss of earnings is awarded by the learned sessions court judge for the period of two months when the plaintiff was on medical leave for the month of August–September 2014. This is based on the evidence of the plaintiff's employer ('SP4') and supporting documents.

FINDINGS OF THIS COURT

Liability

[28] I have reviewed the appeal record.

[29] In advancing his case, the plaintiff contends that he attempted to overtake motor lorry PGS 5398 and had in fact overtook it when the motor lorry PGS 5398 suddenly collided with the rear of his motorcycle PFW 2358. According to the plaintiff, the first defendant did not give any signal to turn before turning right into Lorong Perwira 6. According to the plaintiff, he saw the motor lorry PGS 5398 did not give a signal to turn before taking the right turn because he was then tailing the motor lorry PGS 5398 immediately before he overtook it. When the plaintiff was overtaking motor lorry PGS 5398, he only encroached slightly on the opposite road, presumably to manoeuvre his move to overtake motor lorry PGS 5398.

[30] SP2, an eyewitness, supports the evidence of the plaintiff. At the material time, SP2 was travelling in the opposite direction. Further, according to SP2, when he saw the plaintiff overtaking the motor lorry PGS 5398, the plaintiff was riding in the middle of the road and did not encroach onto his path. In cross-examination, SP2 said he was sure that motor lorry PGS 5398 did not give any signal to turn before turning right. SP2 disagrees with the suggestion of learned counsel for the defendants that the motor lorry PGS 5398 had stopped before making the right turn and maintains that motor lorry PGS 5398 did not give signal to turn.

[31] The first defendant on the other hand contends that before making the right turn, he gave signal to turn, slowed down and made the right turn when he saw there were no approaching vehicles. It was after he made the right turn that he heard the collision sound on the front right side of his motor lorry PGS 5398 and found that the plaintiff had collided with his motor lorry PGS 5398. The first defendant maintains that he had already made the right turn when the collision occurred.

[32] I am mindful of the approach to take when presented with conflicting evidence by parties in the course of a trial. The supreme court in *Chai Kah Sim*

v Ishak bin Saad [1986] 2 MLJ 132; [1986] CLJ Rep 80 held that the correct test to be applied in cases where contradictory versions of the accident were presented before the court, it is for the court to take into consideration other available evidence, such as the sketch plan and photographs of the scene showing the positions of the two vehicles after the accident and the police reports lodged by both parties.

[33] In the present appeal, the sketch plan and the two photographs show that both vehicles were at the mouth of the junction to Lorong Perwira 6. The two photographs clearly show that the motor lorry PGS 5398 was in the path of oncoming traffic at a position almost parallel to the main road instead of at a 90 degree tangent from the main road as it should have been had it in fact attempted the right turning at the mouth of the junction before actually making the turn.

[34] SP1 in his evidence states that he found scratch marks on the road at position 'F' in the sketch plan but there were no broken pieces or fragments. According to SP1, he believes the scratch marks marked as 'F', which was caused by the motorcycle PFW 2358 in the collision, is the point of impact. This point of impact corresponds with the position of both vehicles as shown in the photographs.

[35] The police report lodged by the plaintiff was tendered and marked as exh P4. In his police report, the plaintiff states that the motor lorry PGS 5398 did not give any signal before making the right turn. The police report lodged by the first defendant was tendered and marked as exh D15. In his police report, the first defendant did not state that he did give signal before making the right turn.

[36] Upon scrutiny of these pieces of evidence, I am of the opinion that the learned sessions court judge has applied the correct principles and her findings are supported by the evidence adduced. The mute evidence which was considered by the learned sessions court judge clearly supports the finding of facts she made. I agree with the learned sessions court judge that it was highly probable that the motor lorry PGS 5398 driven by the first defendant had attempted to turn right even before he approached the mouth of the junction. I also agree with the finding of the learned sessions court judge that the first defendant did not give a signal to turn before making the right turn into Lorong Perwira 6. The first defendant lodged the police report on the same day. If the defendant did in fact give a signal before turning right, he would have stated it so in his police report. The contemporaneous evidence lends probability to the fact that the first defendant did not give a signal before

turning right.

[37] In accident cases where the parties involved invariably give their own account as to how the accident had happened, generally, the disclosure of important and crucial facts in a police report made at the earliest possible opportunity would be the most desirable piece of evidence to assist a trier of fact to determine which version is the most probable.

[38] With regard to the damage to the vehicles, SP1 in his evidence states that the left side mirror of motorcycle PFW 2358 are bent, the right side mirror was broken, the right side of the body cover was scratched and the right foot pedal was bent. On the other hand, the damage to the motor lorry PGS 5398 are scratches to the right front door, a bent to the right foot steps and a bent to the right side mirror.

[39] The damage to the vehicles are consistent with the findings that the motor lorry PGS 5398 was hit at its front right side by the motorcycle PFW 2358 during the collision. The damage to the vehicles do not support the contention of the plaintiff that the motor lorry PGS 5398 had hit the motorcycle PFW 2358 at the rear.

[40] To this end, I agree with the findings of the learned sessions court judge that the plaintiff and the first defendant were both negligent.

[41] In the case of *Takong Tabari v Government of Sarawak & Ors and another appeal* [1998] 4 MLJ 512; [1998] 4 CLJ 589, it was held, inter alia, at p 592 that:

> An appellate court will interfere with the decision of a trial judge in apportioning liability if the trial judge had erred in principle or misapprehended the facts. However, even if neither is shown, an appellate court will interfere if it is of the opinion that the judge was clearly wrong.

Further at p 519 (MLJ); p 602 (CLJ):

> At this juncture, it is pertinent to ask under what circumstances can an appellate court vary or alter an apportionment made by a judge at first instance? That same question was posed to the English Court of Appeal in the case of *Kerry v Carter* [1969] 3 All ER 723, where Lord Denning MR answered it in the following manner:
>
> > So we have both sides at fault, and we are left with the question of apportionment. We have been referred to cases on this subject, particularly the recent case of *Brown v Thompson* [1968] 2 All ER 708; [1968] 1 WLR 1003. Since that case it seems to have been assumed in some quarters that this court will rarely, if ever, alter an apportionment made by the judge. Such is a misreading of

> that case. I think that the attitude of this court was correctly stated in that case by Edmund Davies LJ, when he quoted from the judgment of Sellers LJ, in *Quintas v National Smelting Co Ltd* [1961] 1 All ER 630 at p 636; [1961] 1 WLR 401 at p 409. This court adopts in regard to apportionment the same attitude as it does to damages. We will interfere if the judge has gone wrong in principle or is shown to have misapprehended the facts; but, even if neither of these is shown, we will interfere if we are of opinion that the judge was clearly wrong. After all, the function of this court is to be a court of appeal. We are here to put right that which has gone wrong. If we think that the judge below was wrong, then we ought to say so, and alter the apportionment accordingly.

[42] The plaintiff was issued with a traffic summons under r 10 of the Road Traffic Rules 1959 and he paid the fines. This fact is a relevant consideration to find a certain degree of liability against the plaintiff.

[43] In *Chang Chong Foo & Anor v Shivanathan* [1992] 2 MLJ 473; [1992] 1 CLJ Rep 27, the Supreme Court at p 476 (MLJ); p 30 (CLJ) observed, inter alia, as follows:

> With regard to the learned judge's admission of the fact that the defendant had pleaded guilty to a charge of dangerous driving we would refer to two decisions of Raja Azlan J (as he then was):
>
> In *Chock Kek Ling v Patt Hup Transport Co Ltd & Ors* [1966] 1 MLJ 120 where he said at p 121:
>
> > Evidence was brought to show that the fourth defendant had pleaded guilty to driving without due care and attention in respect of the accident. Although this was not conclusive evidence of the fourth defendant's negligence, it is an admissible admission which supports the plaintiff's case and which weighs against the fourth defendant: *Noor Mohamed v Palanivelu* [1956] MLJ 114.
>
> And in *Lim Ah Toh v Ang Yau Chee & Anor* [1969] 2 MLJ 194 where he said at p 196:
>
> > The plea of guilty by the first defendant to a charge of inconsiderate driving is an admissible admission which further supports the plaintiff's case and which weighs against the defendants: see *Noor Mohamed v Palanivelu*; *EA Long v Wong Chin Wah*.

[44] Although the learned sessions court judge did not make a specific finding that payment of the fine by the plaintiff in respect of the traffic summons under r 10 of the Road Traffic Rules 1959 weighs against the plaintiff, the learned sessions court judge had not gone clearly wrong on apportionment of liability. The learned sessions court judge made a finding that the plaintiff had behaved in a dangerous manner when he overtook the motor lorry PGS 5398 at a place where there was a junction. This finding is

consistent with the fact that the plaintiff was issued with a traffic summons under r 10 of the Road Traffic Rules 1959 and he paid the fines. This, to my mind, shows that the learned sessions court judge had directed her mind to the fact of the traffic summons being paid by the plaintiff and considered that such fact weighed against the plaintiff when she apportions the liability between the parties.

[45] I have considered the apportionment of liability between the plaintiff and the defendant made by the learned sessions court judge. In light of the evidence considered by the trial court, I am of the view that there is no reason to disturb the decision of the learned sessions court judge with regard to apportionment of liability.

Quantum

[46] With regard to the injuries whereby the quantum is disputed, I am of the opinion that there are no strong or cogent reasons to intervene with the decision of the learned sessions court judge.

[47] The learned sessions court judge made separate awards for fracture of three ribs and bilateral lung contusion and haemothorax. The defendants submitted that a global award of RM14,000 should be made instead of a separate award for each injury citing the case of *Chong Sao Kuan v Danian Yeng bin Shaifullah* [2014] 2 PIR 93. With respect, I am unable to agree with this. Upon review of the evidence, I am of the view that the injuries sustained are related to different parts of the body and affect different functions. There was no challenge advanced by the defendants to show that these injuries are connected and should be assessed together as a global award. As such, I am of the view that the learned sessions court judge was right in exercising her discretion to make the separate awards.

[48] It is trite that an appellate court will not ordinarily intervene with the findings and award of the trial court unless the following are shown: (a) that the award or findings are clearly wrong or erroneous; taking into account irrelevant matters and not considering relevant matters; and (b) that the findings were clearly wrong in law and principle.

(*Bank Utama (M) Bhd v Insan Budi Sdn Bhd* [2009] 1 MLJ 148; [2009] 1 CLJ 221, *Amar Singh v Chin Kiew* [1960] 1 MLJ 77; [1960] 1 LNS 5).

[49] I am also guided by the principles laid down in the case of *Mahmod bin Kailan v Goh Seng Choon & Anor* [1976] 2 MLJ 239; [1976] 1 LNS 68 whereby the Federal Court held as follows:

> The principle upon which we can interfere with the award has been stated by Lord Wright in *Davies v Powell Duffryn Associated Collieries Ltd* [1942] AC 601 at pp 616–617 as follows: Where the award is that of the judge alone, the appeal is by way of rehearing on damages as on all other issues, but as there is generally so much room for individual choice so that the assessment of damages is more like an exercise of discretion than an ordinary act of decision, the appellate court is particularly slow to reverse the trial judge on a question of the amount of damages. It is difficult to lay down any precise rule which will cover all cases, but a good general guide is given by Greer LJ in *Flint v Lovell*. In effect the court, before it interferes with an award of damages, should be satisfied that the judge has acted on a wrong principle of law, or has misapprehended the facts, or has for these other reasons made a wholly erroneous estimate of the damage suffered. It is not enough that there is a balance of opinion or preference. The scale must go down heavily against the figure attacked if the appellate court is to interfere, whether on the ground of excess or insufficiency.

[50] The learned sessions court judge has relied on and considered the relevant cases as well as the range of awards found in the Compendium of Personal Injury Awards 2014. I am of the view that the learned sessions court judge has considered relevant factors and the award is not erroneous or manifestly excessive. I accordingly affirm the same.

Special damages

[51] In respect of the sum of RM6,000 special damages awarded for loss of earnings, the learned sessions court judge allowed that amount for the period of two months when the plaintiff was on medical leave, namely for the months of August–September 2014. Upon reviewing the evidence and the document tendered, I agree with the submissions of learned counsel for the defendants. The plaintiff's employer ('SP4') said in evidence that the plaintiff was paid his salary of RM3,000 a month until the month of July 2014. The salary vouchers were tendered as exh P14. Based on exh P11 ('the medical certificates'), the plaintiff was given medical leave only until 15 September 2014. Thus, I reduce the award for loss of earnings to 1 1/2 months and award the plaintiff RM4,500. On this point the judgment of the sessions court is reversed.

CONCLUSION

[52] In the above premise, apart from the decision of the learned sessions court judge on loss of earnings which is reversed, I dismiss the appeal and affirm the decision of the learned sessions court judge on both liability and quantum with RM3,000 costs.

Appeal dismissed; and decision of SCJ on both liability and quantum affirmed except for SCJ's decision on loss of earnings.

Reported by Dzulqarnain Ab Fatar